

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

V.

CASE NO. 07-M-AP-4-2
(The Honorable Thomas A. Bedell)

RICHARD MALFREGEOT,
Defendant.

ORDER
FOLLOWING APPEAL OF MAGISTRATE COURT
CASE TO CIRCUIT COURT AND SENTENCING DEFENDANT

On this, the 3rd day of October, 2007, came the State of West Virginia, by and through James Armstrong, assistant prosecuting attorney for Harrison County, West Virginia, and came the Defendant, Richard Malfregeot, in person and by and through counsel, Thomas Dyer, for the purpose of a hearing to pronounce the court's rulings in regard to the Magistrate Court appeal filed by Defendant following his conviction in the Magistrate Court of Harrison County for the misdemeanor offense of stalking/harassment. Also present for these proceedings was Mike Burnside, probation officer for Harrison County Adult Probation.

WHEREUPON, this Court noted that it had received a request from local media to cover these proceedings and requested the State and Defendant to offer their respective positions in regard to said request. The State advised that because no minors associated with the underlying matter were present in the courtroom, the State did not have any objection to media coverage of the proceedings. Defendant's counsel advised that he did object to media coverage of the proceedings and asked that television coverage be excluded. This Court, after hearing the respective positions of the State and Defendant, and having considered the same, did accordingly **ORDER** that television coverage of the proceedings would be permitted.

WHEREUPON, this Court proceeded to review the procedural history of this matter. Specifically, this Court noted that following a bench trial in the Magistrate Court of Harrison County on May 2, 2007, the Defendant was convicted of the misdemeanor offense of stalking/harassment by Magistrate Tammy Marple. Following said conviction, Defendant timely filed a notice of appeal of said conviction and a trial *de novo* was held in front of The Honorable Thomas A. Bedell on August 30, 2007. Following said trial, this Court did direct both the State and Defendant to submit proposed findings of fact and conclusions of law in regard to the evidence presented at said trial *de novo*.

WHEREUPON, this Court, prior to issuing its rulings, permitted both the State and Defendant's counsel an opportunity to address this Court. The State advised this Court that it was going to rely on the findings and conclusions it had submitted and that it contended that the evidence presented clearly supported a finding that the Defendant was guilty beyond a reasonable doubt of the offense of stalking/harassment. The Defendant's counsel similarly advised that he would rely on the findings and conclusions he had submitted and that the evidence did not support a finding that the Defendant was guilty beyond a reasonable doubt of the offense of stalking/harassment.

WHEREUPON, this Court permitted the Defendant an opportunity to address this Court and Defendant declined to make any statements.

WHEREUPON, this Court, having heard the testimony of the witnesses called by both the State and Defendant, and having considered the evidence presented in this matter does according make the following **Findings of Fact and Conclusions of Law**:

1. That the Defendant, Richard Malfregeot, was a teacher employed by Bridgeport Middle School, Harrison County, West Virginia, in school year 2005-2006.

2. That the victim, "LL", was a student at Bridgeport Middle School during school year 2005-2006.¹

3. That the Defendant was employed at Bridgeport Middle School as a history teacher and as an athletic coach.

4. That the Defendant, at the time of trial, did not dispute any of the factual allegations of the victim. The Defendant did attempt to offer other explanations for his behavior. (Trial transcript Pg 196)

5. That the victim, "LL", did not have any classes with the Defendant during the 2005-2006 school year, nor did the victim participate in the sport that the Defendant coached. Further, the victim never had the Defendant as a teacher or coach prior to the 2005-2006 school year.

6. That the victim first met the Defendant on a bus trip to a football game.

7. That upon first meeting the Defendant, the Defendant began discussing with the victim her boyfriend.

8. That after first meeting the Defendant, the Defendant began approaching the victim at school.

9. That after first meeting the victim, the Defendant began approaching her at school in the bus room, in the cafeteria, in the hall way, and at her locker.

10. That at the outset, the Defendant's contact with the victim was sporadic but that as the school year progressed, the Defendant began having contact with the victim on a daily basis, with such contact occurring several times per day.

¹ Due to sensitive nature of this matter, and because the victim and several witnesses are juveniles, the State shall only use the initials of the victim and juvenile witnesses when referencing said victim and witnesses. State ex rel. West Virginia Department of Human Resources v. Cheryl M., 177 W.Va. 688 (1987).

11. That for the majority of the school year, the Defendant would go to the victim's locker on a daily basis to talk with the victim and that during these discussions, the Defendant would often discuss personal topics with the victim.

12. That because the victim did not have the Defendant as a teacher, there was no legitimate reason for the Defendant to have such frequent contact with the victim.

13. That the victim testified that her locker was on one "pod" of the school and that the Defendant's classroom was located on another "pod" of the school, although the location of the victim's locker was in the area of the responsibility of the Defendant to monitor as part of his duties.

14. That almost all contact between the victim and Defendant was initiated by the Defendant.

15. That regardless of where the contact between the Defendant and victim took place, the Defendant would not discuss academic or school related issues with the victim during his contact with her, but that the Defendant would instead discuss personal matters such as the victim's boyfriend and the victim's appearance.

16. That the victim testified that other teachers did not discuss with her the sort of personal topics that the Defendant would discuss with her.

17. That the victim and other witnesses testified that other teachers did not go to student's lockers on a daily basis.

18. That witnesses testified that teachers at the school did not discuss with the students the types of things that the Defendant discussed with the victim.

19. That the victim testified that no other teachers at the school had contact with her with the same frequency that the Defendant had contact with her.

20. That other witnesses testified that they witnessed the Defendant at the victim's locker on a frequent and regular basis.
21. That the victim testified that the Defendant had taken photographs of her.
22. That the Defendant had several photographs hanging on the wall in the front of his classroom.
23. That the victim testified that the one thing that all of the photographs in Defendant's classroom had in common was that said photographs had the victim in them.
24. That although the victim did not have any classes with the Defendant, the Defendant nonetheless displayed photographs of the victim in his classroom.
25. That the victim testified that she did not give the Defendant permission to display the photographs of her in his classroom.
26. That the Defendant did not take all of the photographs that depicted the victim and which were displayed in the Defendant's class room. However, the Defendant had obtained several photographs depicting the victim.
27. That the victim was unsure how the Defendant obtained some of the photographs.
28. That the victim did not give any of the photographs depicting the victim to the Defendant.
29. That the victim testified that one of the photographs displayed in the Defendant's classroom depicted her dressed in pajama like clothing at a slumber party.
30. That the victim testified that once she was made aware of the photographs being displayed in the Defendant's classroom, she became upset.
31. That the Defendant was asked to remove the photographs of the victim from the Defendant's classroom, but that the Defendant refused to do so.

32. That a witness confirmed that the victim did not like the photographs being displayed in the Defendant's classroom and that the photographs made the victim feel uncomfortable.

33. That the photographs were eventually removed from the Defendant's classroom by another student because the Defendant would not remove the photographs himself.

34. That the victim testified that the Defendant began having physical contact with her as the school year progressed.

35. That the Defendant had put his arm around the victim on several occasions.

36. That the victim testified that she did not like the Defendant placing his arm around her, but that she did not tell him to not engage in such conduct.

37. That the victim never gave the Defendant permission to place his arm around the victim.

38. That the victim testified that when the Defendant would place his arm around her, she felt uncomfortable and would shrug her shoulders in an attempt to discourage the Defendant from placing his arm around her.

39. That the Defendant confirmed that he had placed his arm around the victim on several occasions.

40. That the victim testified that the Defendant had stood behind her during a computer class and rubbed her shoulders and played with her hair.

41. That the victim testified that she did not give the Defendant permission to play with her hair or rub her shoulders.

42. That the victim did not tell the Defendant to stop playing with her hair or rubbing her shoulders, but that the victim shrugged her shoulders in an attempt to have the Defendant stop.

43. That the victim testified that the Defendant's actions of playing with the victim's hair and rubbing the victim's shoulders made the victim feel very uncomfortable.

44. That April 2, 2006, was a Sunday and not a regular school day.

45. That on April 2, 2006, the Defendant was at Bridgeport Middle School working at a concession stand for an athletic event.

46. That on April 2, 2006, the victim's younger brother and several friends were at Bridgeport Middle School and wished to play football. However, they did not have a football and asked the Defendant if he had one.

47. That the Defendant told the victim's younger brother that he would need to first speak with the victim to make sure that it was alright for the victim's younger brother to have the football.

48. That the Defendant asked the victim's younger brother for the victim's cell phone number and that the Defendant received said cell phone number.

49. That the Defendant did not call the victim's residence but instead called the victim on her personal cell phone on a non-school day and left a message stating "LL, DG is waiting for you at Bridgeport Middle School".²

50. That the victim received the message on the evening of April 2, 2006.

51. That the victim testified that she became very upset and scared upon receiving the telephone message from Defendant.

² As with the use of initials to identify the victim, the initials of the minor child whom the Defendant was referencing in his message to the victim are used in lieu of the minor child's name.

52. That a friend of the victim testified that the victim was very upset and frightened after she received the message from Defendant.
53. That the Defendant testified that he called the victim's cell phone as a prank.
54. That the Defendant could not provide an explanation as to how he would have reacted if the victim had gone to Bridgeport Middle School on April 2, 2006.
55. That the victim told her parents about the message left on her cell phone by the Defendant.
56. That the victim's father testified that the victim was extremely upset and scared after having received the telephone message.
57. That on April 3, 2006, the day following the date on which the victim receive the telephone message from Defendant, the Defendant approached the victim at school and showed her where he had saved her cell phone number on his cell phone.
58. That the victim indicated that the Defendant's conduct of showing her that he had saved her cell phone number on his cell phone scared her.
59. That the victim testified that after the Defendant called her, he had physical contact with her by holding her hand.
60. That the victim did not initiate any of the physical contact between the Defendant and herself and which occurred throughout the school year.
61. That the victim did not consent to the physical contact that occurred between the Defendant and herself throughout the school year.
62. That the Defendant admitted that he had frequent contact with the victim throughout the school year.

63. That the Defendant admitted that he had some physical contact with the victim during the school year, although he denied ever having purposefully played with her hair.

64. That the Defendant admitted to calling the victim on her cell phone on April 2, 2006.

65. That the Defendant admitted that "DG" was not present at the school when he called the victim and told her that "DG" was present at the school waiting for her.

66. That the Defendant admitted to having photographs of the victim in his classroom.

67. That the Defendant admitted to being asked to remove the photographs of the victim displayed in his classroom.

68. That the Defendant admitted to not removing the photographs of the victim despite being aware that the victim wished to have the photographs removed

69. That the Defendant admitted to showing the victim his cell phone after he called her to show the victim that the Defendant had saved the victim's cell phone number on his phone.

CONCLUSIONS OF LAW

70. That the Defendant is charged with one (1) count of stalking/harassment in violation of West Virginia Code Section 61-2-9a(a).

71. That West Virginia Code Section 61-2-9a(a) provides, in pertinent part, that "[a]ny person who willfully and repeatedly follows and harasses a person with whom he or she has or in the past has had or with whom he or she seeks to establish a personal or social relationship, whether or not the intention is reciprocated...is guilty of a misdemeanor...".

72. That West Virginia Code Section 61-2-9a(g)(1) defines the term "harasses" as "willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress".

73. That the conduct of the Defendant directed towards the victim was not accidental and was willful.

74. That the Defendant's conduct of having frequent and regular contact with the victim at her locker was willful and intentional and that such proposition is supported by the fact that the Defendant was the individual who initiated such contact.

75. That the Defendant's conduct of displaying photographs of the victim in Defendant's classroom was willful and intentional and that such proposition is supported by the fact that the Defendant is the one who had control over the display of the photographs.

76. That the Defendant's conduct of making physical contact with the victim on several occasions was willful and intentional and that such proposition is supported by the fact that the Defendant is the individual who initiated such contact.

77. That the Defendant's conduct of not removing the photographs of the victim despite being requested to do so was willful and intentional and that such proposition is supported by the fact that the Defendant is the one who had control over the photographs.

78. That the Defendant's conduct of calling the victim on her personal cell phone on a non-school day was willful and intentional and that such proposition is supported by the fact that the Defendant actively engaged in conduct to acquire the phone number, that the Defendant did not ask for the home phone number of the victim and that Defendant actually placed the call.

79. That the Defendant's frequent contact with the victim to discuss personal non-scholastic related issues was willful and intentional and that such proposition is supported by the fact that the Defendant is the one that initiated such contact.

80. That the Defendant's conduct of showing the victim that he had saved her cell phone number on his phone was willful and intentional.

81. That the Defendant's conduct of going to the victim's locker on an almost daily basis was repeated conduct as such conduct occurred regularly over a significant period of time.

82. That the Defendant's conduct of making physical contact with the victim was repeated conduct as such conduct occurred on several occasions over a significant period of time.

83. That the Defendant's conduct of having contact and discussions with the victim about non-school related matters throughout the school year was repeated conduct as such conduct occurred regularly over a significant period of time.

84. That the Defendant's continuous display of photographs depicting the victim was repeated conduct as such conduct occurred regularly over a significant period of time.

85. That the Defendant "followed" the victim by regularly going to locations where the victim was present to have contact with the victim and that this proposition is supported by the fact that the Defendant did not have the victim in any of his classes (i.e there was no reason for the Defendant to have such regular contact with the victim).

86. That the Defendant "followed" the victim by calling the victim's cell phone and leaving a message that could reasonably be construed as an enticement to the victim to come to the location where the Defendant was present.

87. That the Defendant harassed the victim by engaging in willful conduct directed toward the victim that caused the victim mental and emotional injury and that such conduct was

exacerbated by the fact that the Defendant and victim occupied a teacher/student relationship and by the fact that there was a considerable age difference between the two. Such willful conduct engaged in by the Defendant included: Frequent regular contact with the victim who not one of the Defendant's students; discussions with the victim regarding personal non-school related matters; placing his arm around the victim; holding the victim's hand; playing with the victim's hair; rubbing the victim's shoulders; displaying photographs of the victim in his classroom with one of the photographs depicting the victim in pajama like clothing; refusing to remove the photographs despite being requested to do so; calling the victim on her cell phone on a non-school day; calling the victim and leaving a message which could reasonably be construed as an enticement to come to the location where the Defendant was located; and showing the victim that he had saved her cell phone number on his phone;.

88. That the Defendant's conduct toward the victim caused the victim mental and emotional harm as testified to by the victim, her father and friends;

89. That the Defendant's conduct was designed to facilitate a social and personal relationship with the victim as demonstrated by the Defendant's frequent contact with the victim, the Defendant's physical contact with the victim, the Defendant's discussion with the victim of personal non-school related matters, and the Defendant's actions of obtaining and using the victim's cell phone number for the purpose of leaving a message on the victim's cell phone which can reasonably be construed as an enticement for the victim to come to the location where the Defendant was present.

90. That the victim did not engage in conduct that evidences that she reciprocated the Defendant's attempts to establish a social and personal relationship with the Defendant.

91. That the victim did not give the Defendant permission to have physical contact with her and she attempted to discourage the Defendant from continuing to do so by way of physical gestures and body language.

92. That the victim did not give the Defendant permission to come to her locker on an almost daily basis.

93. That the victim did not go to the Defendant's classroom to speak with him, nor did the victim engage in any conduct that could be construed as seeking the Defendant out.

94. That the victim did not give the Defendant permission to display photographs of her in his classroom and, in fact, the victim requested that the Defendant remove said photographs.

95. That the victim did not give the Defendant her cell phone number.

96. That the victim did not give the Defendant permission to call her on her cell phone.

97. That the victim did not give the Defendant permission to save her cell phone number on the Defendant's cell phone.

98. That the Defendant's conduct throughout the school year made the victim increasingly frightened, uncomfortable and nervous.

99. That the State of West Virginia has proven beyond a reasonable doubt that the Defendant willfully and repeatedly followed and harassed the victim, with whom he sought to establish a personal and social relationship, and that the Defendant's intention was not reciprocated by said victim.

100. That the Defendant is guilty of stalking/harassment.

WHEREUPON, this Court did accordingly **ORDER** that the Defendant, Richard Malfregeot, pursuant to West Virginia Code Section 61-2-9a(a) is guilty of the misdemeanor offense of stalking/harassment and that the Defendant now stands convicted of said offense. This Court further noted the exceptions of Defendant to the findings of fact and conclusions of law made by this Court and further noted the exceptions of Defendant to this Court's rulings in regard to the conviction of Defendant for the offense of stalking/harassment.

WHEREUPON, this Court noted that in order to avoid any further delay in the proceedings and potential prejudice to Defendant by any such delay, it had ordered at the trial *de novo* that a Pre-sentence Investigation Report be prepared in the eventuality that the Defendant was convicted of the offense. This Court further noted it had received the Pre-sentence Investigation Report prepared in this matter and questioned the State and Defendant as to whether there were any corrections, modifications, or additions noted by either party in regard to said Pre-sentence Investigation Report. Thereafter, both the State and Defendant advised this Court that there were no corrections, modifications, or additions to the Report. This Court did accordingly **ORDER** that the Pre-sentence Investigation Report be filed and made a part of the record of these proceedings.

WHEREUPON, this Court did accordingly **ORDER** that the Defendant be sentenced to six (6) months incarceration from October 3, 2007, thereby giving the Defendant credit for all time previously served, and that the Defendant be fined Five Hundred Dollars (\$500.00). Thereafter, this Court did **ORDER** that said sentence of incarceration and fine be suspended and that the Defendant be placed on unsupervised probation for a period of two (2) years from October 3, 2007.

WHEREUPON, this Court did **ORDER** that the Defendant, while on unsupervised probation, shall not violate any laws of this or any other State, the United States or any municipality. Further, this Court did **ORDER** that a term and condition of Defendant's unsupervised probation shall be that the Defendant shall have no contact with the victim while Defendant is on said probation.

WHEREUPON, this Court did advise the Defendant of his rights in regard to appealing the decision of this Court and did **ORDER** that the Defendant pay the costs of this proceeding and the costs of Magistrate Court proceeding 06M-1446 within sixty (60) days of October 3, 2007, and that the State of West Virginia is granted a judgment against Defendant for said costs.

This Court further advised the Defendant that pursuant to Chapter 62, Article 4, Section 17 of the Code of West Virginia, if costs, fines, forfeitures, penalties or restitution imposed by the Court on the Defendant in this matter are not paid in full when Ordered to do so by the Court, the Circuit Clerk shall notify the West Virginia Division of Motor Vehicles of such failure to pay and upon such notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the costs, fines, forfeitures or penalties are paid. The original notice advising the Defendant of the same was **ORDERED** filed and made a part of the record in this case and a copy of said notice was provided to the Defendant and his counsel.

Following entry hereof, the Clerk of this Court is directed to send certified copies of this Order to the following:

James Armstrong, APA
Harrison County Courthouse
301 West Main Street
Clarksburg, WV 26301

Thomas Dyer, Esq.
PO Box 1332
Clarksburg, WV 26302

Harrison County Adult Probation
Harrison County Courthouse
301 West Main Street
Clarksburg, WV 26301

ENTER:

November 5 2007


THOMAS A. BEDELL, JUDGE